IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 885 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

YASIN GULABNABI VOHRA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

==========

Appearance :
MR SHAKEEL A QURESHI for Appellant(s) : 1,
MR AJ DESAI, APP for Opponent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 22/06/2007

ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

The appellant came to be tried by Sessions Court, Sabarkantha, Camping at Modasa in Sessions Case No.120 of 1994 for the offence of murder of Bhanuprasad Punjalal Patel by causing fatal injuries with knife. The appellant is alleged to have caused these injuries to the deceased alongwith co-accused Mayuddin Mahmadmiya Kureshi on 3rd March, 1991 at about 10 p.m. at Himmatnagar-Modasa road near Bhavanpura Patiya.

1.1 The prosecution case is that on 3rd March, 1991 at about 10 p.m., deceased Bhanuprasad Punjalal Patel was travelling on Motorcycle No. G.A.D. 2581 alongwith Keshavbhai Shankarbhai Patel and was travelling to Modasa from village Limbhoi. When they reached near the place of incident, the appellant alongwith co-accused Mayuddin Mahmadmiya Kureshi came on their motorcycle and quarreled with first informant Keshavbhai and deceased Bhanuprasad regarding overtaking of the vehicle.

1.2 It is further the case of the prosecution that at that time, co-accused Mayuddin Mahmadmiya Kureshi inflicted knife blows in the chest of deceased Bhanuprasad and the present appellant – original accused no.2 inflicted knife blows in the back of the deceased and the deceased succumbed to these injuries which amounted to a murder.

1.3 It is further the case of the prosecution

that the appellant alongwith co-accused committed breach of notification issued under the Bombay Police Act prohibiting carrying of or using of weapons punishable under Section 135 of the Bombay Police Act.

1.4 The incident was seen by Keshavbhai Shankarbhai Patel and he lodged F.I.R. with Modasa (Rural) Police Station. On seeing the incident, witness Keshavbhai Patel got scared and started to run away from the place of incident. He was chased by the assailants. Somehow a jeep came and on seeing the jeep, the assailants ran away. After the incident was over, witness Keshavbhai lodged F.I.R. as stated above on the basis of which offence was registered and investigation started.

1.5 The police, having found sufficient evidence against the assailants, filed chargesheet against the appellant and co-accused Mayuddin Mahmadmiya Kureshi. However, before the trial could commence, original accused no.1 – Mayuddin Mahmadmiya Kureshi absconded and, therefore, ultimately the trial commenced against original accused no.2 – present appellant.

1.6 The chargesheet was filed in the Court of J.M.F.C., Modasa who, in turn, committed the case to the Court of Sessions, Sabarkantha and Sessions Case No.120 of 1994 came to be registered. Charge was framed against the appellant at Exh.6. The appellant pleaded not guilty to the charge and claimed to be tried.

1.7 After considering the evidence led by the prosecution, the Trial Court came to the conclusion that the prosecution was successful in establishing charges against the appellant and recorded conviction of the appellant – original accused no.2 for offence punishable under Section 302 read with Section 34 of I.P.C. and under Section 135 of the Bombay Police Act. The appellant was sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- (in default, to undergo S.I. for six months) for the offence punishable under Section 302 read with Section 34 of I.P.C. For the conviction of offence under Section 135 of the Bombay Police Act, the appellant was sentenced to undergo R.I. For four months and to pay a fine of Rs.100/- (in default, to undergo S.I. For 15 days) and hence, this appeal.

2. We have heard learned advocate Mr. Qureshi and learned APP Mr. A.J. Desai. We have examined the record and proceedings in light of the contentions raised by rival sides.

3. Learned advocate Mr. Qureshi submitted that the appellant is convicted for an offence punishable under Section 302 read with Section 34 of I.P.C. but if the evidence is seen, it is in the form of deposition of first informant – Keshavbhai (p.w.1). He is the only eye-witness and if his deposition is seen, it is clear that the incident occurred out of a petty cause all of a sudden. The evidence of Keshavbhai indicates that he is not sure as to who gave the knife blows. If that be so, the appellant could not have been convicted and sentenced under

Section 302 read with Section 34 of I.P.C. Mr. Qureshi submitted that it is too far-fetched to infer intention to cause death on part of the appellant and, therefore, the conviction may be set aside.

3.1 Mr. Qureshi submitted that the appellant has been in jail for a long time. He submitted that at the best, the case can be considered to be falling under Section 304 Part I of I.P.C. He submitted that the appeal may accordingly by allowed.

4. Learned APP Mr. Desai submitted that if the evidence is seen, it is clear that the deceased died of knife injuries. The injuries are established to have been caused by the appellant as well as the absconding accused. It has come not in examination-in-chief but in cross-examination also that p.w.1 states that both the assailants were inflicting knife blows. Mr. Desai submitted that conviction of the appellant is, therefore, well-founded. The appellant had a knife with him which he has used in causing injury which is found to be fatal. He has actively participated in the incident alongwith absconding accused and when both the persons assaulted the deceased with their respective knives and caused his death, it reflects their common intention to cause death of the deceased. Mr. Desai, therefore, submitted that the appeal may be dismissed.

5. We have, on record, evidence of Dr. Jinabhai Amthabhai Yadav (Exh.32). The doctor has deposed that he had performed the post-mortem of the deceased on 4th March, 1991. He had noticed a stab wound on

right side of the chest going obliquely of the size of 4.5 cm x ½ cm which was cavity deep. One more injury was noticed on lower back and still one more injury on the left side of the abdomen of the size of 1 cm x ½ cm x 1.5 cm in depth.

5.1 In the internal injury, the doctor noticed that there was a fracture of Constrocondon. There was a fracture of rib and injury on ribs. Both upper and lower lobes of right lung were ruptured. The heart was empty. According to the doctor, the injuries were possible with the Muddamal knife. The cause of death was shock due to profused bleeding. During cross-examination, the doctor denies the suggestion that the injuries noticed on the dead body while performing post-mortem was not possible with the Muddamal knife. He also denies the suggestion that the injuries found on the dead body were possible out of a fall.

5.2 It is, thus, clear that the death of the deceased was a result of knife injuries received by him. It is nobody's case that the injuries were self-inflicted and the doctor has ruled out the possibility of such injuries being accidental and, therefore, in our view, the prosecution was successful in proving that the deceased met with a homicidal death.

6. On the question as to whether it was the appellant who caused the fatal injuries, there is evidence of first informant – Keshavbhai. He is p.w.1 (Exh.9). He says that he and his cousin

Bhanuprasad were going on a motorcycle. When they reached near Bhavanpura Patiya, a motorcycle of Hero Honda brand passed by them. Later, they found that the riders of the motorcycle were standing waiting for them. They also got down. He says that one of the two inflicted knife blow on Bhanuprasad. The witness says that he was very scared. He tried to stop an ambassador car which was following them but in vain. The car driver did not completely stop the vehicle but the witness says that he boarded the car while it was moving but somehow something went wrong with the car and the car could not move further. The motorcycle again came nearer and the riders tried to pull him from the car. Around that time, a jeep came and the assailants ran away. He, therefore, went to the police and lodged F.I.R. He says that deceased Bhanuprasad had sustained injuries on ears, chest and back. He says that he lodged the F.I.R. (Exh.10). He has seen both the assailants. He had identified them in the T.I. Parade arranged by the Executive Magistrate and he also identified the assailants as the appellant and the absconding accused even before the court. The witness has been cross-examined at length. All that emerges from the cross-examination is that he admits that he cannot say, for certain, as to whether the knife blow was given by the rider of Hero Honda Motorcycle or by the appellant. He denies that he never received any injury. Further, he goes to admit that the appellant and the absconding accused were beating Bhanubhai but he is not sure as to how many blows were given.

7. On plain reading of this deposition, it is

clear that this witness has deposed in a very natural way. His presence is not in dispute as he himself has sustained injuries. He has identified the accused appellant in the court as one of the assailants. He had also identified before the Executive Magistrate which aspect is tested on the touchstone of cross-examination but has remained unshaken. The Executive Magistrate is examined by the prosecution at Exh.19. He deposes about how he undertook the T.I. Parade. An attempt appears to have been made to render the proceedings doubtful by suggesting that the witness could have seen the assailants or the accused just before the T.I. Parade which aspect has been denied by the witness.

8. It is, thus, clear from the evidence that p.w.1 - Keshavbhai had seen the incident. He had identified the appellant as one of the accused persons. He had identified him in the court and has indicated active participation of the appellant in the incident.

9. It has to be accepted that the incident occurred all of a sudden over a petty issue but it is significant that the appellant as well as the absconding accused both were carrying knives with them. It is also significant to note that the appellant has been arrested through transfer warrant where he was was arrested in another offence involving a robbery. Apart from this background of the appellant, we are unable to agree with the submission made by learned advocate Mr. Qureshi that the case would fall under Exception 4 to Section 300.

Simply because the incident had occurred all of a sudden, this exception would not be attracted. In the instant case, if the evidence is seen, there was no sudden fight. The assault is committed by the appellant as well as co-accused as is alleged and it has also come in evidence that the deceased as well as p.w.1 were unarmed. The blows are given by both the assailants (including the appellant) with knives on vital parts of the body namely, chest and back of the chest. The blows are given with force as a result of which the injury has gone deep across the cavity and both the lobes of the right lung are cut.

10. Therefore, with the above evidence, when the assault is committed by two persons armed with knife on a petty cause and injuries are caused on vital parts of the body, conviction under Section 302 read with Section 34 of I.P.C. has to be upheld. The injuries are caused on an unarmed person with a knife causing injury on the vital parts of the body. It is immaterial that p.w.1 is unable to say for certain as to whether the knife blow was given by the appellant or co-accused because in cross-examination itself, he says that both the accused were giving blows to deceased Bhanubhai. We are, therefore, of the view that conviction of the appellant for offence punishable under Section 302 read with Section 34 is well-founded and recorded and there is no scope for any interference in exercise of appellate powers.

11. It is also established that the appellant was armed with a knife. It is also established that notification under Bombay Police Act was in force at

the relevant time and, therefore, conviction under Section 135 of the Bombay Police Act is also well-founded.

12. In our opinion, no interference is called for in exercise of appellate powers. The reasonings recorded and conclusions arrived at by the learned Trial Judge are just, legal and proper and we are broadly in agreement therewith. The appeal, therefore, must fail and stands dismissed. The judgment and order dated 24th February, 1998 rendered by learned Additional Sessions Judge, Sabarkantha Camping at Modasa in Sessions Case No.120 of 1994 stands confirmed.

(A.L. Dave, J.)

(Sharad D. Dave, J.)

hki